

REMARKS

The Official Action of April 20, 2004 has been carefully considered and reconsideration of the application in view of the present submission, which includes a Declaration under 37 CFR 1.132 signed by the inventor, is respectfully requested.

The claims have been amended to correct inadvertent typographical errors in claims 4, 8 and 20.

The Examiner has maintained the rejection of claims 1-4 under 35 USC 103(a) as allegedly being unpatentable over Woods et al. The Examiner has maintained the rejection of claims 5-9, 11-13 and 18-36 under 35 USC 103(a) as allegedly being unpatentable over Woods et al in view of WO 92/16486 or WO 99/35150. Applicant respectfully traverses these rejections.

In maintaining these rejections, the Examiner has advised that she did not consider the data in the test result pages previously submitted since the data were not presented in the form of a signed and dated declaration under 37 CFR 1.132. Applicant now provides such declaration and respectfully submits that the data in the declaration are sufficient to rebut the alleged *prima facie* case of obviousness set forth by the cited references. Specifically, the data show the efficacy of one of the claimed compounds in Sarcoma S, a solid tumor, in CBA mice. By comparison, the data show that such sarcoma is resistant to combretastatin A-4 phosphate, and thereby show that the claimed compound possesses unexpectedly improved properties as compared with the prior art compound. It is respectfully submitted that this showing is

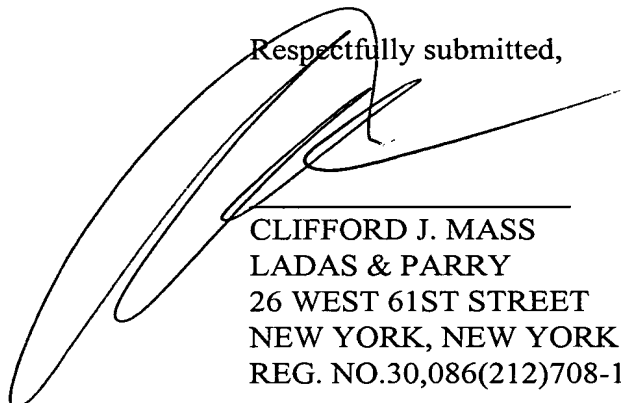
sufficient to rebut the alleged *prima facie* case of obviousness set forth by the cited art. This is *a fortiori* true since Woods et al teach that combretastatin A-4 was the most potent of the series of compounds tested by Woods et al and that there is a **loss** in potency when the 4' methoxy is replaced together with elimination of the 3' hydroxy (Woods et al at p. 709).

Notwithstanding the presentation of evidence in rebuttal, Applicant respectfully submits that the cited art does not set forth even a *prima facie* case of obviousness since there is no definite teaching in Woods et al to replace the 4' methoxy group while maintaining the 3' hydroxy group. As discussed in Applicant's response filed 2 January 2004, the compounds described by Woods as actually having been made and tested all lack the 3' hydroxy group. The Examiner relies on the text on pages 709-710 and Figure 8 of Woods et al for a motivation to replace the 4' methoxy group while maintaining the 3' hydroxy, but Applicant respectfully calls the Examiner's attention to the language in Woods et al which makes clear that Figure 8 and the accompanying text is a hypothetical proposal only (see Woods et al at page 710, second column: "The following features have been **proposed** to be important:These are shown schematically in Figure 8." (Emphasis supplied)). There is no actual structure taught by the reference wherein the 4' methoxy is replaced and the 3' hydroxy is maintained. Accordingly, combretastatin A-4 is the closest prior art structure actually described in the reference and it is respectfully submitted that this structure is not sufficiently similar to the claimed structure to set forth even a *prima facie* case of obviousness. Even if it were, it is respectfully submitted that the evidence of record, as discussed above, would be sufficient to rebut such *prima facie* case.

Claims 10,14 and 37-45 stand withdrawn as being directed to a non-elected method of use. Applicant respectfully requests rejoinder of these method claims in accordance with the provisions of MPEP Section 821.04.

In view of the above, it is respectfully submitted that all rejections and objections of record have been overcome and that the application is now in allowable form. An early notice of allowance is earnestly solicited and is believed to be fully warranted.

Respectfully submitted,

A large, stylized handwritten signature in black ink, appearing to read 'Clifford J. Mass', is written over the signature line and extends to the left.

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